

Remarks/Arguments:

Claims 1 and 3-23 are pending in the application. Claims 10-19 stand withdrawn as drawn to non-elected subject matter. Claims 1, 3-9, and 20-23 were examined and rejected as described below. Applicants have canceled claims 10-19, amended claims 1, 4, 5, and 20, and added new claims 24-26. Support for the amendments can be found throughout the specification, for example, claims 1 and 20: paragraphs [0014], [0017], [0018], [0023], and [0036], and claims 2 and 12 as filed; claim 4: paragraphs [0017] and [0018]; claim 5: paragraph [00018]; claims 24 and 25: paragraph [0017]; claim 26: paragraphs [0014], [0017], [0018], [0023], [0036], and [0102]. The amendments introduce no new matter.

35 U.S.C. §112

The Office Action rejected claims 1, 3-9, and 20-23 for failing to comply with the written description requirement. The Office Action takes issue with the term "absent a physical separator," as allegedly not shown in Figures 1-6. Applicants disagree.

Applicants have amended claim 1 to replace the term "physical separator" with the term "liquid barrier," and believe the amendments remove the basis for the rejection. Applicants refer to paragraph [0023] and Figures 3-6 as supporting this feature. Paragraph [0023] describes sealing elements, designated in the figures by the number 4. Paragraph [0023], describes sealing elements as liquid barriers. The Figures show in three dimensions the presence of these liquid barriers downstream of the application zone. And, the Figures clearly show the *absence* of such liquid barriers between indicator zones. Accordingly, Applicants had possession of the claimed invention at the time of the invention. The rejection, therefore, should be withdrawn.

35 U.S.C. §102

The Office Action rejected claims 1, 3, 4, 6-9, and 22 as anticipated by U.S. Pat. No. 6,103,536 to Geisberg. Applicants submit that the amended claims are not anticipated by Geisberg. Geisberg does not teach or suggest bonding elements that can bind to blood group antigens, and does not teach or suggest a device in which blood group antigens bound to bonding elements are immobilized within their respective indicator zones. On this latter point, Applicants refer to col. 3, lines 45-46, col. 3 lines 54-60, col. 8, lines 20-26, and col. 12, lines 63-66 of Geisberg, where the reference expressly requires that the device has two signal zones in series, and sets forth as *imperative* that the sample passes sequentially through each signal

zone. In contrast, the amended claims recite that the indicator zones are arranged in parallel, and that the blood group antigen bound to the bonding element is immobilized within the indicator zone. Geisberg does not teach all of the claimed features, and the rejection should be withdrawn.

35 U.S.C. §103

The Office Action rejected claims 20, 21, and 23 as obvious over Geisberg in view of U.S. Pat. No. 6,100,099 to Gordon, and rejected claim 5 as obvious over Geisberg in view of U.S. Pat. No. 4,943,522 to Eisinger. These rejections do not establish *prima facie* obviousness because the proposed combination of references do not provide all of the features of the claimed invention, and because a proper reason to combine the references has not been supplied.

Beginning with the rejection of claims 20, 21, and 23, the Office Action states that Gordon describes a device that arranges indicator zones in a diagonal arrangement, and concludes that it would have been obvious to arrange Geisberg's signal zones in a diagonal arrangement according to Gordon for the advantage of having a vertical separation. But, *prima facie* obviousness cannot be established where the proposed modification or combination of the references would render the prior art unsatisfactory for its intended purpose, or would change the principle operation of the references. M.P.E.P. § 2143.02 (V) and (VI).

Applicants submit that those of skill in the art would not have combined the teachings of Gordon with Geisberg because such a combination would render Geisberg unsatisfactory for its intended purpose, and/or would change the principle operation of Geisberg. Geisberg requires that samples pass sequentially through indicator zones. Arranging Geisberg's signal zones in a diagonal arrangement according to Gordon would prohibit the requisite series arrangement and the requirement that the sample proceed through one signal zone before entering another signal zone (Geisberg, col. 12, lines 63-66). As such, arranging Geisberg's signal zones in a diagonal arrangement would render Geisberg unsatisfactory for its intended purpose. In addition, the diagonal arrangement would change the principle operation of Geisberg. For these reasons, the skilled artisan would not combine these references as proposed in the Office Action. The Office Action has thus not provided a proper reason to combine the references, and therefore has not established *prima facie* obviousness of claims 20, 21, and 23.

Concerning claim 5, as set forth above, Geisberg does not teach or suggest a device where the indicator zones are arranged in parallel, and where the analyte of interest does not

Appln. No.: 10/563,659
Amendment Dated: August 18, 2009
Reply to Non-Final Office Action of May 18, 2009

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pass sequentially through multiple indicator zones. Eisinger does not supply these missing elements. As the proposed combination of Geisberg and Eisinger does not teach or suggest all of the limitations of the claimed invention, the rejection does not establish *prima facie* obviousness of claim 5.

Double Patenting

The Office Action provisionally rejected claims 1 and 3-9 on the grounds of nonstatutory double patenting over claims 1-3, 7, 11, 12, 14, and 15 in co-pending application 10/563,681. Applicants note the rejection and request continued abeyance pending an indication of allowable subject matter.

Applicants respectfully request reconsideration and withdrawal of the various rejections in view of the amendments and remarks submitted herewith. An early Notice of Allowance is requested.

Respectfully submitted,

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Date: August 18, 2009

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